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**JUL 3 0 2004**

**OFFICE OF PETITIONS**

In re Application of :  
Howard M. Kingston :  
Application No. 09/262,597 :  
Filed: March 4, 1999 :  
Attorney Docket No. 119994-5 :

**ON PETITION**

This is a decision on the petition under 37 CFR 1.137(b), filed June 10, 2004<sup>1</sup>, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed June 3, 2003, which set a shortened statutory period for reply of three (3) months. A three-month extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned at midnight on December 3, 2003.

The USPTO mailed a Notice of Improper RCE on January 7, 2004. The Notice indicated the Request for Continued Prosecution Application (RCE) filed on December 5, 2003, was found improper as the continued examination under 37 CFR 1.114 does not apply to an application unless prosecution in the application is closed. In view of the above, the \$385.00 fee submitted for the RCE is unnecessary and will be refunded to petitioner's Deposit Account No. 02-2556 as authorized.

The application matter is being forwarded to Technology Center 1600, Art Unit 1614 for further processing.

<sup>1</sup> While the petition indicates that a petition to revive was previously filed on January 14, 2004, this paper has not been located to date; however, the Office of Finance records for this file discloses that a \$665 fee was assessed to a petition bearing a January 16, 2004 mail room date. Since the Petition fee was charged on January 16, 2004 and June 10, 2004, a refund of \$665 for the petition fee submitted on June 10, 2004, will be credited to petitioner's deposit account.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 306-5594.

A handwritten signature in cursive script that reads "Retta Williams".

Retta Williams  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy